

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

IN RE: MARVA YOLANDA DANIEL  
Debtor.

Case No. 14-34850-KRH  
Chapter 13

**ORDER DENYING MOTION TO EXTEND THE AUTOMATIC STAY**

This matter came upon Marva Yolanda Daniel's (the "Debtor") Motion to Extend the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3)(B) and the Affidavit in Support Thereof (the "Motion"). A hearing on the Motion was held on October 1, 2014 (the "Hearing"), at which the Debtor was present with her counsel. The Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 157(a) and 1334 and the general order of reference from the United States District Court for the Eastern District of Virginia dated August 15, 1984, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (G), and that venue is appropriate in this Court pursuant to 28 U.S.C. § 1408.

The Debtor filed this bankruptcy case on September 9, 2014. The Debtor has had a total of six prior bankruptcy cases filed in her name. This includes one chapter 13 bankruptcy case identified at the Hearing, where the Debtor testified that in November of 2003 she authorized her brother to file a bankruptcy case in her name in the Middle District of Florida (the "Florida Bankruptcy Case"). The Florida Bankruptcy Case was dismissed less than 30 days after it was filed, in December of 2003. The debtor has filed a total of five cases with this Court prior to this current case. Case No. 97-35942 was filed on August 25, 1997, and was discharged on December 12, 1997. Case No. 98-33381 was filed May 4, 1998, and was discharged on January 1, 2001. Case No. 08-31002 was filed on March 4, 2008, and was dismissed on December 24,

2009. Case No. 10-34871 was filed on July 12, 2010, and was dismissed on November 15, 2011. Finally, Case No. 12-35693 was filed on October 1, 2012, and was dismissed on August 25, 2014 for failure to make plan payments (the “Prior Case”). This pattern of filings shows that the Debtor has spent a significant portion of the past seventeen years in bankruptcy.

Because the Prior Case was pending during the year immediately preceding the filing of this case, the provisions of § 363(c)(3) of the Bankruptcy Code apply to the instant case. That section effectively provides that where a debtor has been a debtor in a previous bankruptcy case that was dismissed within one year of the filing of the new case, the automatic stay of § 362(a) terminates as to the debtor on the 30th day following the new filing unless within that 30 days the debtor seeks an extension of the stay and the court grants the extension within the 30-day period. In order to obtain an extension of the stay, a debtor must prove by clear and convincing evidence that the filing of the new case was in good faith as to the creditors that would be affected by the stay. 11 U.S.C. § 362(c)(3)(B)–(C); *see also In re Chaney*, 362 B.R. 690 (Bankr. E.D. Va. 2007).

Based upon the Debtor’s extensive filing history and her testimony at the Hearing regarding the Florida Bankruptcy Case, the Court finds that the Debtor has failed to rebut the presumption that this new case was not filed in good faith. As the presumption has not been rebutted, the Court will deny the Motion. The Court previously has held that § 362(c)(3)(A) effects a termination of the stay only with respect to actions taken against the debtor and property of the debtor. The stay that terminates under § 362(c)(3)(A) is not the stay that protects property of the estate. *See In re Taylor*, No. 07-31055-KRH, 2007 WL 1234932 (Bankr. E.D. Va. April 26, 2007). Therefore,

IT IS ORDERED that the motion for continuation of the stay with respect to the Debtor is DENIED.

/s/ Kevin R. Huennekens  
United States Bankruptcy Judge

Entered: 10/2/2014

Entered on Docket: 10/7/2014

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Total Noticed: 24

Date Rcvd: Oct 07, 2014

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email)  
system (continued)

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